

R277-800 received final approval by the Utah State Board of Education on July 14, 2017. R277-800 is published in the August 15, 2017 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of September 21, 2017.

**R277. Education, Administration.**

**R277-800. Utah Schools for the Deaf and the Blind.**

**R277-800-[2]1. Authority and Purpose.**

~~[A-](1)~~ This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision ~~of~~over public education in the Board~~[-];~~;

(b) Section 53A-25[B]b-201 which ~~[describes the authority of the Board regarding the USDB]~~ authorizes the Board to make rules regarding the administration of the Utah Schools for the Deaf and the Blind[-];

(c) Subsection 53A-25b-20[3]1(3), which directs the Board to appoint Advisory Council members ~~[and assign a USOE staff member as a liaison between the Board and the Advisory Council];~~;

(d) Section 53A-25b-302, which directs the Board to establish entrance policies and procedures to be considered, consistent with the IDEA, for student placement recommendations at the USDB~~[-];~~;

(e) Section 53A-25b-501, which directs the Board to establish the USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources~~[-];~~; and

(f) ~~[Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities]~~ Section 53A-1-401, which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

~~[B-](2)~~ The purpose of this rule is to provide standards and procedures for the operation of the USDB and the USDB outreach programs and services.

**R277-800-[4]2. Definitions.**

~~[A-](1)~~ "Accessible media producer" means a [companies] company or [agencies] agency that creates fully-accessible, specialized, student-ready formats for curriculum materials, such as:

(a) Braille[-];

(b) large print[-];

(c) audio books[-]; or

(d) digital books.

~~[B-](2)~~ "Advisory Council" means the Advisory Council for the Utah Schools for the Deaf and the Blind ~~[with members, responsibilities, and other provisions under Section 53A-25b-203]~~ appointed by the Board in accordance with Subsection 53A-25b-201(3) and Section R277-800-4.

~~[C-](3)(a)~~ "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes and abilities pertaining to the fields of vision and hearing.

(b) ~~[These]~~ An assessment~~[s]~~ may include the following areas of focus:

(1)i) a valid, reliable and appropriate assessment[s] given to determine eligibility for placement and services by a team of qualified professionals and ~~[the]~~ a student's parent[~~(s)~~] or guardian;

(2)ii) a functional assessment[s] accomplished by observation and measurement of daily living skills and functional use of vision or hearing, or both; and

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([3]iii) academic evaluations as part of the Utah Performance Assessment System for Students (U-PASS), including an alternate assessment with appropriate accommodations as indicated on [the] a student's individualized education program (IEP).

[D. "Board" means the Utah State Board of Education.]

[E.](4)(a) "Campus-[B]based [P]program" means a program provided by USDB that offers an alternative to an outreach program for students, ages three to 22, who are blind or visually impaired, deaf or hard of hearing, or deafblind ~~[(ages three to 22)]~~.

(b) Under a campus-based program, [S]services are provided by qualified USDB staff at a USDB site.

[F.](5)(a) "The Chafee Amendment to the Copyright Act~~[, 17 U.S.C. Section 121]~~" or the "~~[(Chafee Amendment)]~~" is a federal law, 17 U.S.C. 121, that allows an authorized entity to reproduce or distribute copyrighted materials in specialized formats for students who are blind or have other print disabilities without the need to obtain permission of the copyright owner.

(b) Authorized entities under the Chafee Amendment include [are] governmental or nonprofit organizations that have a primary mission to provide copyrighted works in specialized formats for students who are blind or have other print disabilities.

[G.](6) "Child Find" means activities and strategies designed to locate, evaluate, and identify individuals eligible for services under the IDEA.

[H.](7) "Consultation" means a meeting for discussion or ~~[the]~~ seeking ~~[of]~~ advice.

[I.](8) "Designated LEA" means the local education agency assigned by a student's IEP or Section 504 team to have primary responsibility for ensuring that all rights and requirements regarding individual student assessment, eligibility services and procedural safeguards are satisfied consistent with the ~~[Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400, Part B, or Section 504 of the Rehabilitation Act of 1973]~~ IDEA.

[J.](9) "Deafblindness" or "deafblind" means written verification provided by a medical professional stating that an individual has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness. ~~[The definition of deafblindness also includes the provisions of 53A-25b-102 and 301.]~~

(10) "Deafness" is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

[K.](11) "Educational Resource Center" ~~[(ERC)]~~ or "ERC" is a center under the direction of the USDB that:

(a) provides information, technology, and instructional materials to assist ~~[Utah children with sensory impairments]~~ children who are deaf, hard of hearing, blind, visually impaired, and deafblind in progressing in the curriculum[-]; and [It is also the mission of the ERC to]

(b) facilitates access to materials, information, and training for teachers and parents of [children with sensory impairments] children who are deaf, hard of hearing, blind, visually

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impaired, and deafblind.

(12) “Extension classroom” means a classroom provided by an LEA where USDB provides a full-time classroom teacher and related services to students who remain enrolled in the LEA’s general education programs.

~~[L.](13) [“Hearing impairment/deafness” (“hard of hearing” for purposes of this rule)] “Hearing loss” is [defined as follows:~~

~~—— (1) Hearing impairment is] an impairment in hearing, whether permanent or fluctuating, that adversely affects a student’s educational performance, but that is not included under the definition of deafness.~~

~~[(2) Deafness is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student’s educational performance.]~~

~~[M. “Local education agency” (LEA) means an agency that has administrative control and direction for public education. School districts, charter schools, and the USDB are LEAs.]~~

~~[N.](14) “National Instructional Materials Access Center” or [(NIMAC)] “NIMAC” is a central national repository that receives file sets in the NIMAS from publishers to maintain, catalogue, and house for future reference file sets for states to use with students who have print disabilities and require accessible alternate formats.~~

~~[O.](15) “National Instructional Materials Accessibility Standard” or [(NIMAS)] “NIMAS” means the electronic standard that enables all producers of alternate formats for students with print disabilities to work from one standard format available from publishers for this purpose.~~

~~[P.](16)(a) “Outreach program” is a program provided by the USDB that offers an alternative to a campus-based program for students ages three to 22 who are blind or visually impaired, deaf or hard of hearing, or deafblind [(ages three to 22)].~~

~~(b) In an outreach program, [S]services are provided at a student’s resident school or at a designated school by a qualified teacher of the blind or visually impaired, deaf or hard of hearing, or deafblind.~~

~~[Q.](17)(a) “Related services” means those supportive services that are necessary for the appropriate implementation of [the] an IEP.~~

~~(b) Related services [These] may include, but are not limited to:~~

~~(i) speech pathology[;];~~

~~(ii) audiology[;];~~

~~(iii) low vision services[;];~~

~~(iv) orientation and mobility[;];~~

~~(v) school [counselor] counseling[;];~~

~~(vi) transportation[;];~~

~~(vii) school [nurse] nursing services[;];~~

~~(viii) occupational therapy[;]; or~~

~~(ix) physical therapy.~~

~~[R.](18) “Section 504 accommodation plan” [required by Section 504 of the Rehabilitation Act of 1973] means a plan required by Section 504 of the Rehabilitation Act~~

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of 1973, which is designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

~~[S-]~~(19) "Technical assistance" means assistance to public education employees, ~~[or]~~ licensed educators, ~~[and]~~ parents, and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

~~[T-]~~(20) "USDB" means the Utah Schools for the Deaf and the Blind.

~~[U-]~~ "USOE" means the Utah State Office of Education.

~~[V-]~~(21) "Utah State Instructional Materials Access Center" ~~[(USIMAC)]~~ or "USIMAC" ~~[is]~~ means a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

~~[W-]~~(22)(a) "Visual impairment," ~~[(including blindness)]~~ is an impairment in vision that, even with correction, adversely affects a student's educational performance.

(b) ~~[The term]~~ "Visual impairment" includes both partial sight and blindness that adversely affect[s] a student's educational performance.

~~[X-]~~(23) "Weighted pupil unit" or "WPU" means ~~[weighted pupil unit,]~~ the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

### **R277-800-3. ~~[Board Authority Over and Support for]~~ Operation of USDB.**

~~[A-]~~(1) Consistent with Section 53A-25b-201, the Board is the governing board of the USDB.

~~[B-]~~(2) The USDB superintendent, appointed consistent with Section 53A-25b-201(2), is subject to the direction of the Board and ~~[its executive officer, the State]~~ the Superintendent ~~[of Public Instruction]~~.

~~[C-]~~(3) The ~~[Board shall appoint the]~~ USDB superintendent ~~[on the basis of outstanding qualifications,]~~ shall serve subject to the following:

(~~[1]~~)a) ~~[F]~~the USDB superintendent's term of office is for two years and until a successor is appointed ~~[and qualified,]~~

(~~[2]~~)b) ~~[F]~~the Board shall set the USDB superintendent's compensation for services~~[-]~~;

(~~[3]~~)c) ~~[F]~~the USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board~~[-]~~;

(~~[4]~~)d) ~~[F]~~the USDB superintendent qualifications shall be established by the Board~~[-]~~; and

(~~[5]~~)e) ~~[F]~~the duties of the USDB superintendent shall be established by the Board.

~~[D-]~~(4) The ~~[Board shall direct the USOE to]~~ Superintendent shall support, provide assistance, and work cooperatively with the USDB in providing services to designated Utah students.

~~[E-]~~(5) The ~~[Board]~~ Superintendent shall assign a liaison to provide appropriate supervision to the USDB to ensure compliance with the law.

~~[F-]~~(6) The ~~[Board and USOE staff, as assigned,]~~ Superintendent shall assist the USDB, its superintendent, and associate superintendents in adopting policies and

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preparing an annual budget that are consistent with the law.

([1]7) The Board shall approve the annual budget and expenditures of USDB.

([2]8)(a) The USDB superintendent shall, subject to the approval of the Board, appoint an associate superintendent to administer the Utah School for the Deaf and an associate superintendent to administer the Utah School for the Blind.

(b) Qualifications of ~~the~~ a USDB associate superintendent[s] shall be aligned with the requirements of Section 53A-25b-201.

([3]9)(a) The USDB superintendent and associate[s] superintendents may hire staff and teachers as needed for the USDB.

(b) Educators and related service providers shall be appropriately licensed and credentialed ~~or both~~ for their specific assignments.

([4]10) In employment practices and decisions, the USDB and the USDB superintendent shall maintain the accreditation of the USDB school and programs.

([5]11) The USDB superintendent and associate[s] superintendents shall communicate regularly and effectively with the ~~[USOE]~~ Board and provide a written report to the Board at least annually in adequate time prior to the November legislative interim meeting, or at such other time as requested by the Board.

([6]12) The USDB report shall contain:

(a) a financial report;

(b) a report on the activities of the superintendent and associate superintendents;

(c) a report on activities to involve parents and constituency, including LEA personnel and advocacy groups, in the governance of the school and implementation of service delivery plans for students ~~[students with sensory impairments]~~ who are deaf, hard of hearing, blind, visually impaired, and deafblind; and

(d) a report on student achievement, including student achievement data, that provides:

(i) longitudinal data for both current and previous students served by USDB[.];

(ii) graduation rates[.]; and

(iii) students exiting USDB and their educational placements after exiting.

([7]13) USDB shall ensure that each child[f] or student served by USDB is assigned a unique student identifier (SSID) to allow for annual data collection and reporting of achievement of current and past students.

([8]14) USDB shall provide the ~~[USOE]~~ Superintendent with a listing of past and current children[f] or students, including the assigned unique student identifier, served by USDB by September 1 of each year to facilitate the required data collection.

#### **R277-800-4. USDB Advisory Council and Community Council.**

~~[A-](1)~~ The Board shall establish the Advisory Council for USDB and appoint ~~[and support]~~ Advisory Council members as directed in Section 53A-25b-201.

~~[B-](2)~~ The Advisory Council shall have not more than 11 Board-appointed voting members and shall include members as qualified under Section 53A-25b-201.

~~[C-](3)(a)~~ ~~[The Board shall appoint]~~ Advisory Council members ~~[for]~~ shall serve two year terms and members may serve no more than three consecutive terms.



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(b) Notwithstanding, Subsection (3)(a), [A] advisory Council members serve at the pleasure of the Board.

~~[D:]~~(4) If an Advisory Council member resigns or is asked to resign, the Board shall appoint another member in a timely manner [by] after seeking nominations.

~~[E:]~~(5) The Board shall assist the Advisory Council in developing and passing by-laws establishing procedures for:

(a) nominating [and] Advisory Council members;

(b) recommending dismissal of Advisory Council members[.]; [and setting]

(c) ethical standards for Advisory Council members[.]; and

~~[(1)]~~d) [The bylaws shall include operating procedures for] operation of the Advisory Council[. and].

~~[(2)]~~(6) [the] Advisory Council bylaws may allow for representation on the Advisory Council of constituencies within the USDB community.

~~[F. Advisory Council membership and school community council membership:]~~

(7) The USDB shall establish a community council to operate in a comparable manner to a school community council under Section 53A-1a-108 through 108.1 and Rule R277-491..

~~[(1)]~~(8) Members of the Advisory Council may serve as school community council members [under Section 53A-1a-108(4) and R277-491].

~~[(2)]~~(9) The USDB school community council and election process shall be [consistent] the same as for a district school in [with] Section 53A-1a-108 and R277-491.

~~[(3)]~~(10) The USDB may implement electronic voting and consider encouraging school community council participation through electronic meetings and technology that facilitate participation of parents of USDB students [in voting and school community council meetings].

## **R277-800-5. USDB or Student's District of Residence/Charter School as Designated LEA.**

~~[A:]~~(1) To be eligible to receive free services from the USDB, a student must [be a resident of Utah and] meet the requirements of Section 53A-25b-301.

~~[B:]~~(2)(a) A student's IEP [under IDEA] or Section 504 accommodation plan shall determine a student's placement at the USDB, in a [school] district[.]/\_school or charter school.

(b) USDB shall limit its services for students who are school-age [shall be limited] to those on an IEP or Section 504 accommodation plan.

~~[C:]~~(3) Consistent with Subsection 53A-25b-301(3)[(e)], an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf or deafblind student consistent with [IDEA using the Blind/Visually Impaired Guidelines, Deaf/Hard of Hearing Guidelines, or Deafblind Guidelines, as guidance. The USDB Guidelines are hereby incorporated by reference and included with this rule.] Board Special Education Rules incorporated by reference in Section R277-750-2.

~~[D:]~~(4) It is the responsibility of the student's district of residence or charter school to conduct Child Find [under R277-800-1F], and to convene the initial IEP or Section 504

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team meeting in order to determine a student's placement.

(1)a) A student's initial IEP or Section 504 accommodation plan meeting shall include a representative from the student's district of residence or charter school and a representative from the USDB.

(2)b) ~~The~~ An LEA shall ~~consider~~ defer, where appropriate, to the parental preference in the IEP or Section 504 accommodation plan process consistent with Subsection 53A-25b-301(3)(c).

(c) Notwithstanding, Subsection (4)(b), in compliance with the IDEA, ~~the~~ the final placement decision, as documented on the IEP or Section 504 accommodation plan, shall document a free appropriate public education ~~(FAPE)~~ for the student and shall not be determined solely by parental preference.

~~E.~~(5)(a) ~~When~~ If USDB is the designated LEA for a student, USDB has full responsibility for all services defined in the student's IEP ~~or~~ or Section 504 accommodation plan.

(b) Notwithstanding USDB's designation as LEA for a student, ~~A~~ a representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation plan team.

~~F.~~(6) ~~When the~~ If a district of residence or charter school is the LEA designated to provide services to a student with an IEP or Section 504 accommodation plan, the district of residence or charter school has the responsibility for providing instruction and services for the student except that the USDB:

(a) may be designated by the team as a related service provider~~;~~ and ~~The USDB~~

(b) remains a required member of the student's IEP or 504 accommodation plan team.

~~G.~~(7) ~~The~~ A student's IEP or Section 504 accommodation plan shall clearly define what services are to be provided by ~~the~~ a related service provider~~(s)~~.

~~H.~~(8) The IEP or Section 504 accommodation plan team shall determine the designated LEA for student placement.

~~I. Parent complaints regarding student placement at district of residence or USDB;~~

(1)9) If a parent is dissatisfied with a student's placement at USDB, ~~or~~ the student's district of residence, or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, ~~November 2013~~ adopted by the Board in Section R277-750-2

(2)10) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and the student's district of residence, or for the USDB and district of residence to share responsibility for serving a student, ~~the~~ a parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, ~~November 2013~~ adopted by the Board in Section R277-750-2.

#### **[R277-800-6. LEA and Board Interagency Agreement.**

~~\_\_\_\_\_ A. The Board, USOE, and LEAs, with assistance from the USDB, shall develop an Interagency Agreement that further explains the roles, services, and financial obligations to students and participating entities and a basic process for resolving disagreements~~

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among the parties to the Agreement:

~~—— B. The Board shall also designate a USOE arbitrator or a panel of arbitrators to resolve disagreements among the USOE, the USDB, and LEAs regarding services to blind, visually impaired, deaf, hard of hearing, and deafblind students in order to provide services. The Board may make this appointment when a disagreement arises.~~

~~—— C. The Interagency Agreement shall detail eligibility for USDB services, cost, if any, for the provision of USDB services and accessible materials.]~~

#### **R277-800-[7]6. Assessment of USDB Students [with Visual and Hearing Impairments] Served in LEAs of Residence.**

~~[A-](1) An [A] appropriate specialist[s] shall assess a student[s] who may be deaf, hard of hearing, blind, visually impaired, or deafblind [consistent with Section 53A-1-604 et seq., R277-402, R277-700, R277-705, IDEA, Section 504 of the Rehabilitation Act, and Section 53A-25B-304.] using statewide assessment results and in compliance with Board rule and state and federal law.~~

~~[B-](2) The USDB shall establish an assessment policy and guidelines to implement required assessments, [and] which address:~~

~~([1]a) appropriate, complete, and timely evaluations of students;~~

~~([2]b) procedures for administration of assessments in addition to those required by the law, as determined by IEPs, Section 504 accommodation plans, and individual teachers;~~

~~([3]c) complete and accurate required assessments available to eligible students consistent with state and LEA assessment timelines and availability of materials for non-disabled students;~~

~~([4]d) staff professional development and preparation on appropriate administration of assessments and reporting of assessment results; and~~

~~([5]e) procedures to ensure appropriate interpretation and use of assessments and results for parents and [use of assessment results by] USDB personnel.~~

#### **R277-800-[8]7. [Outreach Programs] Extension Classrooms.**

~~[A-](1) The USDB and an LEA[s] may negotiate to share the costs for providing more efficient, cost-effective, and convenient services to students who are deaf, blind, or deafblind in [public school] extension classrooms in locations other than the USDB campus.~~

~~[B-](2) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), the LEA[s] shall provide:~~

~~([1]a) classroom[{s}];~~

~~([2]b) basic instructional materials;~~

~~([3]c) physical education, music, media, school lunch, and other programs and services, consistent with those programs and services provided to other students within the LEA;~~

~~([4]d) administrative support;~~

~~([5]e) basic secretarial services;~~



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([6]f) special education related services[-]; and  
(g) IT support.

[C-](3) If the USDB and an LEA enter into an agreement in accordance with Subsection (1), [F]the USDB shall provide:

([1]a) classroom instructors, including aides; and  
([2]b) instructional materials specific to the disability of the students.

[D-](4) [LEAs] An agreement pursuant to Subsection (1) may reassign the responsibilities of the USDB and a school district or charter school as negotiated between the LEA[s] and the USDB.

[E-](5) An LEA shall claim the state WPU if the LEA provides all items or services identified in [R277-800-8B] Subsection (2).

#### **R277-800-[9]8. USDB Fiscal Procedures.**

[A-](1) The USDB shall keep fiscal, program, and accounting records as required by the Board and shall submit reports required by the Board.

[B-](2) The USDB shall follow state standards for fiscal procedures, auditing, and accounting, consistent with Subsection 53A-25b-105(3).

[C-](3) The USDB is a public state entity under the direction of the Board and as such is subject to state laws and exemptions consistent with Section 53A-25b-105.

[D-](4)(a) The USDB shall prepare and present an annual budget to the Board that includes no more than a five percent carryover of any one fund, including reimbursement funds from federal programs.

(b) The five percent carryover prohibition does not apply to funds received under Section 53A-16-101.5 and Section 12 of the Utah Enabling Act.

[E-](5)(a) The [USOE] Superintendent shall recover federal reimbursement funds (IDEA and Medicaid) quarterly during the year.

(b) The [USOE] Superintendent shall identify reimbursement amounts in the current year's budget, [or no] but in no event later than the subsequent year's budget.

[F-](6)(a) The USDB shall use the revenue from the federal trust land grant designated for the [maintenance of the School for the Blind and for the School for the Deaf] benefit of the blind and the deaf, solely for the benefit of deaf, [and] blind, and deafblind students.

(b) The recommended or designated use of [the] federal trust land funds is subject to review by the Board.

#### **R277-800-[10]9. Utah State Instructional Materials Access Center [(USIMAC)].**

[A-](1) The [Board authorizes the establishment of the] USIMAC [to] shall produce core instructional materials in alternative formats to ensure that all students with print disabilities qualified under the Chafee Amendment receive their materials in a timely manner.

[B-](2) The USIMAC shall provide materials for all students with print disabilities who are qualified under the Chafee Amendment or otherwise eligible through an IEP or Section 504 accommodation plan.

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~~[C.](3)~~ The ~~[USOE]~~ Superintendent shall oversee the operations of the USIMAC.

~~[D.](4)~~ The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from the Utah Legislature and the ~~[USOE]~~ Board.

~~[E.](5)~~ An LEA[s] may purchase accessible instructional materials using ~~[their]~~ the LEA's own funding or request the production of accessible instructional materials in alternate formats from the USIMAC in accordance with established opt in procedures to ensure timely access for students with print disabilities.

~~[F.](6)~~ ~~[For LEA textbook requests submitted by April 1 of the preceding school year, the]~~ USIMAC shall provide ~~[the]~~ a textbook [in the] in an alternate format by the beginning of the school year if requested no later than April 1 of the preceding school year by an LEA [alternate format by the beginning of the following school year].

~~[G.](7)~~ The USDB ERC shall serve as the repository and distribution center for the USIMAC.

~~[H. Operation of the USIMAC]~~

~~[(1)8]~~ ~~[Qualifying students:]~~ A student qualifies for accessible instructional materials from the USIMAC, including [(Braille, audio, large print, or digital formats)] following an LEA determination that the student has a print disability in accordance with:

(a) the Chafee Amendment[.];

(b) IDEA[.]; or

(c) Section 504 of the Rehabilitation Act.

~~[(2) Costs for developing core instructional materials:]~~

(2)(a) An LEA ~~[shall]~~ may request textbooks for blind, vision impaired or deafblind students served by the USDB or the LEA[s] consistent with ~~[the]~~ a student's IEP or Section 504 accommodation plan.

(b)(i) When an LEA requests a core instructional textbook ~~[that was published before August 2006,]~~ the USIMAC shall conduct a search for the textbook within existing resources[.], and if the textbook is available, the USIMAC shall send the textbook to the ERC for distribution to the LEA.

(ii) If ~~[the]~~ a textbook is not available within existing resources, the USIMAC will conduct a search to determine if the textbook is available for purchase through another source.

(iii) If ~~[the]~~ a textbook is available through the American Printing House for the Blind (APH), the USDB shall order the textbook using state acquired federal funds designated specifically for USIMAC materials and ~~[sent]~~ send the textbook to the ERC for distribution to the LEA.

(iii)(iv) If ~~[the]~~ a textbook is not available from APH, but is available from another accessible media producer, the textbook shall be purchased and sent to the ERC for distribution to the LEA.

(i)(v) If ~~[the]~~ a textbook is not available for purchase, the LEA shall provide a regular print hard copy of the textbook to the USIMAC, which[. The USIMAC] shall then produce the textbook and send it to the ERC for distribution.

(vi) The USIMAC shall produce ~~[the]~~ a textbook in ~~[the]~~ an LEA requested alternate format in accordance with the cost sharing outlined ~~[in the Interagency Agreement]~~

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described in ~~Section R277-800-6~~] in a technical manual prepared by the Superintendent.

(c) The sharing of costs for purchases described in ~~[R277-800-12]~~ this R277-800-9 shall be outlined in ~~[the Interagency Agreement described in R277-800-6]~~ a technical manual prepared by the Superintendent.

~~[(d) For textbooks published after August 2006, the USIMAC shall follow the same procedures outlined in R277-800-12H(2)(b). If the USIMAC is unable to obtain the NIMAS file set in a timely manner as a result of publisher negligence, the Board shall authorize the USIMAC to seek damages from publisher(s) as a result of the failure to meet contract provisions.]~~

~~[(3) Textbook publishers required to meet NIMAS requirements:]~~

(3)(a) All approved textbook contracts for the state of Utah for instructional materials published after August 2006 shall include a provision for making NIMAS file sets available through the NIMAC in accordance with the IDEA and ~~[USOE]~~ Board Instructional Materials Contract timelines.

(b) If the USIMAC is unable to obtain the NIMAS file set from the NIMAC because the publisher fails to timely provide the NIMAS file set to the NIMAC in accordance with the IDEA and ~~[USOE]~~ Board Instructional Materials Contract timelines, the USIMAC ~~[shall]~~ may:

(i) bill the textbook publisher the difference in the cost of producing the alternate format textbook without benefit of the NIMAS file set~~[-];~~ or

(ii) request authorization from the Board to seek damages from the publisher for failure to meet contract provisions.

(c) The Superintendent shall advise [P]publishers ~~[shall be advised]~~ of the ~~[rule]~~ provisions of this Subsection (3)~~[-]~~.

(d) ~~[f]~~ The Utah Instructional Materials Commission created under R277-469 ~~[shall]~~ may not approve textbooks and materials from publishers that have a pattern of not providing materials and textbooks for students with disabilities in a timely manner, consistent with the law and Board rules.

~~[(d)4]~~ (a) An LEA[s shall] may request and access audio books through the USIMAC, as appropriate, or through other sources.

(b) Membership required for other sources is the responsibility of the LEA designated as the responsible entity for serving the student in the IEP or Section 504 accommodation plan.

**KEY: educational administration**

**Date of Enactment or Last Substantive Amendment: ~~[November 10, 2014]~~2017**

**Notice of Continuation: July 19, 2017**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-25b-20[3]1; 53A-25b-302; 53A-25b-501; 53A-1-401[3]**